IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 331 OF 2002

Smt. Shanoor Jamil Farooqui .. appellant

v/s.

ITO, Ward 20(5), Bombay .. Respondent

Mr.Sunil Lala for appellant.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 18th August, 2004

P.C.

Heard Mr. Sunil Lala, the learned counsel for the assessee-appellant.

2. For the assessment year 1997-98, the assessing officer found that as per the stock statement filed by the assessee with the bank, the value of the stock as on 31st March, 197 was Rs.5,39,175/- (finished goods Rs.4,27,125 plus raw material Rs.1,12,050/-). However, the stock statement as per the assessee's books as on 31.3.1997 reflected the value of the stock at Rs.3,12,000/- only. The said stock as shown in the assessee's books was only raw material. Having noticed the said difference, the assessing officer asked the assessee to explain as to why the stock of finished goods, amounting to Rs.4,27,125/- should not be

added to the income as being unaccounted stock. The assessee was directed to produce the books, vouchers for verification. It is not in dispute that inspite of several notices, the assessee did not furnish any details nor offered any explanation for the difference.

3. The assessing officer, accordingly, added a sum of Rs.4,27,125/- as unexplained expenses in his stock. The appeal was preferred by the assesses before CIT(A) but the said appeal came to be dismissed. The assessee then preferred further appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the assessee's appeal observing thus-

> "I have carefully considered the rival submissions and perused the record. In the instant case the AO as well as CIT(A) have given sufficient opportunity but the assessee did not furnish any evidence to prove that the stock statement furnished to the bank was merely to obtain higher overdraft facility and the stock shown therein does not reflect correct stock position. Even before the Tribunal, the assessee did not make any effort to prove his case. Under the circumstances, I am of the considered view that the addition made by the AO is in accordance with law."

4. The learned counsel for the assessee submitted before us that onus for an addition on account of unaccounted/excess stock was on the revenue and the revenue failed to discharge its onus. The learned counsel submitted that the onus on revenue cannot

be said to have been discharged by relying upon the stock statement submitted by the assessee to the bank. The learned counsel placed reliance upon the judgment of the Madras High Court in the case of Commissioner of Income Tax v. V.N.Swamy, 241 ITR 363. The learned counsel would also submit that the finding of the Tribunal was perverse as on the same material, different view has been taken by the Tribunal in the matter arising out of the penalty proceedings.

5. We are not persuaded by the submissions of the learned counsel for the assessee. Firstly because the assessee despite opportunity given by the assessing officer did not produce any details nor produce books, vouchers etc. nor offered any explanation for the difference in the stock noticed by the assessing officer. Secondly, the question whether the onus is discharged or not is always a question of fact and in the facts and circumstances of the present case reliance placed by the assessing officer on the statement of the stock furnished by the assessee to the bank for availing higher credit facilities in reaching the conclusion that the statement of stock maintained in the books by the assessee was not correct cannot be faulted. As already pointed out by us, the question whether onus is discharged or not is always a question of fact and in this view of the matter, the judgment

of the Madras High Court relied upon by the learned counsel for the assessee cannot be said to be laying down the universal rule that the onus cannot be discharged by relying on the stock statement submitted by the assessee to the bank.

6. All in all, we are satisfied that no substantial question of law arises in this appeal.

Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)